

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

BETH ANN BARTON,

Plaintiff and Appellant,

v.

NATIONWIDE DENTAL
LABORATORY, INC. et al.,

Defendants and Respondents.

E069947

(Super.Ct.No. CIVDS1412670)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J. Schneider, Jr., Judge. Affirmed.

Holstein, Taylor and Unitt and Brian C. Unitt, for Plaintiff and Appellant.

Law Offices of Eric G. Anderson, Charles A. Palmer and Daniel Y. Chang for Defendant and Respondent Nationwide Dental Laboratory, Inc.

Ziprick & Associates, Robert H. Ziprick and Jonathan R. Ziprick for Defendant and Respondent Nationwide Dental (Xiamen) Co. Ltd.

Plaintiff Beth Ann Barton claimed that she suffered an allergic reaction to her dental crowns. She sued her dentist, the maker of the crowns, and the supplier of the metal alloys used in the crowns. Defendant Nationwide Dental Laboratory, Inc. (Nationwide) made the crowns. Defendant Nationwide Dental (Xiamen) Co. Ltd. (the Xiamen lab) is a related entity. (We will refer to these two entities collectively as the lab defendants.)

The trial court granted the lab defendants' motions for summary adjudication of three products liability causes of action on statute of limitations grounds. After Barton filed a first amended complaint (FAC), the court sustained the lab defendants' demurrers to causes of action for fraud, negligent misrepresentation, and unfair competition. The court also granted their motions to strike the last cause of action against them for breach of contract. Barton challenges all of these rulings on appeal. We find no error and affirm.

BACKGROUND

I. Background Facts

On April 5, 2010, Barton's dentist, Dr. M. Dee Elias, placed crowns on two teeth on the left side of her lower jaw. According to Barton, Dr. Elias said that he would use "high noble" gold crowns and "only the best materials." She asked him to use the manufacturer of her old crowns, a lab owned by Bob Alexander, and he agreed.

Dr. Elias instead ordered gold crowns from Nationwide. His understanding was that, when he specified gold crowns, Nationwide would provide high noble crowns.

Nationwide outsourced some of its work to the Xiamen lab, but it did not

outsource the crowns for Barton. Nationwide made her crowns at its facility in Redlands, California.

Barton began suffering symptoms almost immediately after Dr. Elias placed her crowns. On two dates in April 2010, she complained to Dr. Elias that her cheek felt swollen, her bite felt “off,” and she was experiencing general discomfort on the left side of her mouth.

She continued to complain of symptoms in May 2010. At one May appointment, she saw Dr. Elias and reported jaw pain, swelling in her cheek, and a “funny feeling” on the left side of her mouth. At a second May appointment, she again complained to Dr. Elias of pain, discomfort, and swelling on the left side of her mouth. She also reported a nodule growing on the left side of her tongue. She felt like she was having an allergic reaction to the crowns, and she wanted Dr. Elias to remove them. Dr. Elias responded that she was not having an allergic reaction and that nothing was wrong with the crowns. He also gave her a copy of a “lab slip” with a “sticker” showing that Nationwide had made her crowns with a high noble alloy called Argenco 5. The Argen Corporation (Argen) manufactures Argenco 5, which contains 1.9 percent palladium.

In September 2010, Barton continued to complain to Dr. Elias about swelling on the left side of her mouth, jaw pain, an uncomfortable bite, and the nodule on her tongue. She “probably” mentioned again her thought that she might be having an allergic reaction.

Barton was not satisfied with Dr. Elias’s response to her symptoms and consulted a number of other medical providers from 2010 to 2012. In late 2010, she saw an oral

surgeon and an ear, nose, and throat specialist. The surgeon removed the nodule on her tongue. She told the surgeon that she thought her crowns had caused the nodule. She also saw a general practitioner and another dentist in late 2010 for more opinions on her crowns and the symptoms that she continued to experience. In 2011 and early 2012, she consulted two more ear, nose, and throat specialists about “cobblestoning” in her throat, which she reportedly developed after Dr. Elias placed the crowns.

In February 2012, an allergist determined that Barton is allergic to nickel. She told the allergist that she began experiencing irritation in her mouth and cobblestoning in her throat soon after she got her crowns. The two of them discussed the possibility that her crowns contained nickel. Barton contacted Argen around March 2012 and asked whether the crowns could be tested for nickel without removing them, but she was told that was not possible.

Another dentist removed Barton’s crowns in May 2012. She expressed concern to this dentist that her crowns were causing an allergic reaction. Her mouth “did not feel puffy anymore” within the first few weeks of the crowns’ removal; other symptoms did not subside.

In June 2013, a lab analyzed one of the crowns and determined that it was 3.01 percent palladium but did not contain nickel. The overall composition of the crown was consistent with a noble crown, not a high noble crown.

In November 2013, Barton contacted a dermatologist to test her for allergies to metals. The testing occurred in February 2014 and revealed that Barton is allergic to palladium.

II. *Barton's Complaint*

Barton filed her complaint in August 2014. She alleged three products liability causes of action against the lab defendants (and others) for strict liability, negligence, and breach of warranty.¹ The strict liability cause of action alleged that the lab defendants “designed, specified, manufactured, engineered, apothecated, sold, tested, controlled, prescribed, marketed, inspected, and distributed dental crowns” purporting to consist of Argenco 5, a high noble alloy, and the crowns were defective and unsafe in that they lacked adequate warnings as to possible side effects. The lab defendants allegedly had a duty to disclose those side effects to Barton.

The negligence cause of action was nearly identical to the strict liability cause of action, but it alleged that the lab defendants acted “negligently and carelessly.” The cause of action for breach of warranty alleged that the lab defendants breached warranties that Barton’s crowns were free from defects, safe for their intended use, and merchantable.

III. *The Lab Defendants' Summary Judgment Motions*

Nationwide and the Xiamen lab each moved for summary judgment or, in the alternative, summary adjudication. Among other things, they argued that the products

¹ Barton also alleged the products liability causes of action against Argen, Dr. Elias, and two corporate entities related to Dr. Elias. (We will refer to Dr. Elias and the related corporate entities as the dental defendants.) In addition, she alleged fraud, negligent misrepresentation, and professional negligence against the dental defendants. The dental defendants and Argen are respondents in related appeals but are not parties to this appeal. (See *Barton v. Elias, Elliot, Lampasi, Fehn, Harris & Nguyen et al.*, (E068331, app. pending); *Barton v. The Argen Corporation* (E068583, app. pending).)

liability causes of action were time-barred by the two-year statute of limitations for personal injury claims. (Code Civ. Proc., § 335.1.)² Argen and the dental defendants moved separately for summary judgment.

IV. Barton's Motion for Leave to Amend the Complaint

Before opposing any of the summary judgment motions, Barton moved for leave to amend her complaint. She had already filed a Doe amendment naming a new defendant, the IdentAlloy/IdentCeram Council (IdentAlloy). IdentAlloy is a marketing group that provides certificates to its members identifying their alloys. Argen is a member of IdentAlloy. IdentAlloy certificates indicate the name of the alloy, the composition of the alloy, the manufacturer, and whether the alloy is noble or high noble. Each certificate has two parts—one for the lab and one for the dentist to attach to the patient's records. Upon request, Argen forwards these IdentAlloy certificates to its dental lab customers. In this case, an IdentAlloy certificate was attached to Barton's dental chart certifying that her crowns were made with the high noble alloy Argenco 5. Another such certificate was attached to the form that Dr. Elias filled out when ordering the crowns from Nationwide.

Barton's motion for leave to amend the complaint claimed that she had learned the IdentAlloy certificates were forged. She wanted to add new allegations about the forgery of the certificates, the lack of controls to prevent forgery, and Argen's process of sending IdentAlloy certificates with its alloys to dental labs. She also sought to add the lab

² Further undesignated statutory references are to the Code of Civil Procedure unless otherwise indicated.

defendants to the fraud cause of action; to add the lab defendants, Argen, and IdentAlloy to the negligent misrepresentation cause of action; to add IdentAlloy to the products liability causes of action; and to add a seventh cause of action for unfair competition (Bus. & Prof. Code, § 17200) against the lab defendants, Argen, and IdentAlloy.

Argen and Nationwide opposed the motion for leave to amend the complaint. Nationwide argued in part that if the court granted leave to amend, the court should construe Nationwide's pending summary judgment motion as a summary adjudication motion, because Barton's proposed FAC did not change the causes of action addressed in its summary judgment motion.

The court heard Barton's motion for leave to amend the complaint before all of the defense summary judgment motions. It granted her motion and gave her four days to file and serve the FAC, but it declined to take the pending summary judgment motions off calendar. Instead, it said that it would consider defendants' motions for summary judgment to be motions for summary adjudication of the causes of action in the original complaint.

V. Hearing on the Dental Defendants' Summary Judgment Motion and Ruling on the Lab Defendants' Summary Judgment Motions

The day after giving Barton leave to amend her complaint, the court heard the dental defendants' summary judgment motion. The dental defendants pointed out that Barton's proposed FAC did not include new causes of action against them, so if the court were to grant their summary judgment motion, it would dispose of the entire action against them. Barton's counsel and the court then had the following exchange:

“[Counsel]: May I be heard on one element of that, your Honor? With respect to the amendment that was granted by the Court, is the Court requiring us to not take any clean-up steps with respect to the proposed amendment? And the reason I ask that—

“THE COURT: The Court is telling you you should do what you believe you need to do.

“[Counsel]: Okay.”

Approximately two weeks later, the court heard the lab defendants’ summary judgment motions and summarily adjudicated the products liability causes of action in their favor. The court held that there were no triable issues of material fact as to the statute of limitations defense. It determined that Barton was on inquiry notice of her causes of action by the time she had her crowns removed in May 2012, and because she filed her complaint in August 2014, the causes of action were time-barred under the two-year limitations period.

VI. *Barton’s FAC and the Lab Defendants’ Demurrers and Motions to Strike*

Barton filed her FAC in January 2017, shortly before the summary adjudication rulings in the lab defendants’ favor. The FAC added the lab defendants to the fraud and negligent misrepresentation causes of action and alleged new causes of action against them for unfair competition and breach of contract. (The FAC also included the products liability causes of action, but they were no longer at issue after the court’s summary adjudication rulings.)

The FAC alleged that, before placing her crowns, the dental defendants received one or more IdentAlloy certificates from the lab defendants, and the certificates stated

that the crowns were made with the high noble alloy, Argenco 5. The FAC further alleged that the crowns were made with a noble alloy, not Argenco 5, and the IdentAlloy certificates were “more likely than not” forged. Accordingly, the fraud and negligent misrepresentation causes of action alleged that all defendants provided forged IdentAlloy certificates to Barton misrepresenting that her crowns were made from Argenco 5. The causes of action also alleged separate misrepresentations by the dental defendants. In alleged reliance on those misrepresentations, Barton paid the dental defendants for the crowns, permitted them to place the crowns, and received further dental treatment from them.

The cause of action for unfair competition alleged that providing the forged IdentAlloy certificates and failing to establish procedures to guard against forgery amounted to unlawful, unfair, or fraudulent business practices. The cause of action for breach of contract alleged that the lab defendants breached an agreement with Dr. Elias, who was acting on Barton’s behalf, to provide the highest quality crowns.

The lab defendants moved to strike the breach of contract cause of action for exceeding the scope of the court’s order granting leave to amend. They also demurred to the FAC. In relevant part, they argued that Barton had not pleaded fraud or negligent misrepresentation with the required specificity and that the four-year statute of limitations barred the unfair competition cause of action.

The court sustained the lab defendants’ demurrers to the fraud, negligent misrepresentation, and unfair competition causes of action without leave to amend. It concluded that Barton had not specifically alleged that the lab defendants were

responsible for the forged IdentAlloy certificates, or that she actually relied on those alleged misrepresentations. Moreover, the court concluded, the cause of action for unfair competition was untimely.

The court also struck the breach of contract cause of action without leave to amend. The court explained that its order granting Barton leave to amend did not authorize a breach of contract cause of action. And when Barton's counsel asked about clean-up steps at the dental defendants' summary judgment hearing, the court's response did not authorize Barton to add any amendments that she wanted. The court concluded that Barton had not reasonably construed its comment.

The court entered judgments of dismissal in favor of the lab defendants.

DISCUSSION

I. *Summary Adjudication of the Products Liability Causes of Action*

Barton contends that the court erred by summarily adjudicating the products liability causes of action because the timeliness of her complaint involved triable issues of material fact. We disagree.

A. *Standard of Review*

The trial court may grant summary adjudication if there is no triable issue of material fact and the issues raised by the pleadings may be decided as a matter of law. (§ 437c, subds. (c), (f); *Biancalana v. T.D. Service Co.* (2013) 56 Cal.4th 807, 813.) To prevail, moving defendants must show that one or more elements of the challenged causes of action cannot be established or that there is a complete defense to the causes of

action. (§ 437c, subds. (a), (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849 (*Aguilar*).)

Once the moving defendants have carried their initial burden, the burden shifts to the plaintiff to show a triable issue of material fact with respect to the causes of action or defense. (§ 437c, subd. (p)(2); *Aguilar, supra*, 25 Cal.4th at p. 849.) The court must consider all the evidence and the reasonable inferences from it in the light most favorable to the nonmoving party. (*Aguilar*, at p. 843.) “There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Id.* at p. 850.)

We review summary adjudication orders de novo and apply the same legal standard as the trial court. (*Travelers Property Casualty Co. of America v. Superior Court* (2013) 215 Cal.App.4th 561, 574.) We independently examine the record to determine whether there are triable issues of material fact and whether the moving party is entitled to summary adjudication as a matter of law. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142; *Travelers Property Casualty Co. of America v. Superior Court, supra*, at p. 574.)

B. *Statute of Limitations*

An action for personal injury caused by a defective product, whether alleged as simple negligence, strict liability, or breach of warranty, is governed by a two-year statute of limitations. (§ 335.1; *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 809, fn. 3 (*Fox*); *Bennett v. Suncloud* (1997) 56 Cal.App.4th 91, 94-95, 97 [applying the

predecessor to section 335.1 to products liability causes of action].) The statute of limitations generally begins to run when a cause of action accrues—that is, “when the cause of action is complete with all of its elements.” (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).)

The discovery rule is an exception to this general rule of accrual. (*Norgart, supra*, 21 Cal.4th at p. 397.) Products liability causes of action are subject to delayed accrual under the discovery rule. (*Fox, supra*, 35 Cal.4th at p. 809.) This rule “postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.” (*Norgart*, at p. 397.) Plaintiffs discover a cause of action when they “suspect[] or should suspect that [their] injury was caused by wrongdoing, that someone has done something wrong to [them].” (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 (*Jolly*).) “[W]hen the plaintiff has notice or information of circumstances to put a reasonable person *on inquiry*, or *has the opportunity to obtain knowledge* from sources open to his [or her] investigation . . . the statute commences to run.” (*Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 101; accord *Jolly, supra*, at pp. 1110-1111.)

“While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment [or summary adjudication] is proper.” (*Jolly, supra*, 44 Cal.3d at p. 1112.)

In this case, the undisputed facts lead to only one legitimate inference: The two-year statute of limitations expired before Barton filed her complaint in August 2014. Barton began suffering symptoms in the area of her crowns almost immediately after Dr.

Elias placed them in April 2010. When she saw Dr. Elias in May 2010, she expressed concern that she was having an allergic reaction to them. She continued to report similar symptoms, which she tied to her crowns, to various medical providers for the next two years. She finally had another dentist remove the crowns in May 2012, and she also expressed to him that she might be having an allergic reaction to the crowns.

Even if we delay accrual under the discovery rule, the statute of limitations began to run when she had her crowns removed. She was “under a duty to reasonably investigate” at this point. (*Jolly, supra*, 44 Cal.3d at p. 1112.) There is no dispute that she suspected that the crowns were causing her symptoms. Once they were removed, their composition and her allergy to palladium could “reasonably be discovered through investigation of sources open to her,” and she could determine that she did not get high noble crowns as allegedly promised. (*Id.* at p. 1109.) She was thus on inquiry notice of her claims in May 2012. The statute of limitations expired in May 2014, but she did not file suit until August 2014. Her causes of action were therefore time-barred.

Barton contends that she had facts connecting her symptoms to the crowns no earlier than February 2014, when testing revealed her allergy to palladium, and the statute of limitations began running at that time. But the limitations period started running once she had the opportunity to confirm her suspicions, not when she actually concluded her investigation on her own timeline. Once plaintiffs have “a suspicion of wrongdoing, and therefore an incentive to sue, [they] must decide whether to file suit or sit on [their] rights. So long as a suspicion exists, it is clear that the plaintiff[s] must go find the facts; [they] cannot wait for the facts to find [them].” (*Jolly, supra*, 44 Cal.3d at p. 1111.)

In short, there were no triable issues of material fact as to the lab defendants' statute of limitations defense. On this basis, the court properly granted summary adjudication of the products liability causes of action.

II. *Demurrers to the Fraud, Negligent Misrepresentation, and Unfair Competition Causes of Action*

Barton next contends that the court erred by sustaining the lab defendants' demurrers. She argues that she pleaded fraud and negligent misrepresentation with specificity, and her unfair competition cause of action was timely under the discovery rule. These arguments lack merit.

A. *Standard of Review*

A demurrer tests whether a complaint states a cause of action as a matter of law. (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 808.) We review the complaint independently to determine whether it alleges facts sufficient to state a cause of action. (*McCall v. PacifiCare of Cal. Inc.* (2001) 25 Cal.4th 412, 415.) “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] . . .’ [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. *Fraud and Negligent Misrepresentation*

“In California, fraud must be pled specifically; general and conclusory allegations do not suffice.” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) “Every element of the cause of action for fraud must be alleged in the proper manner and the facts

constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made.” (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.) The plaintiff must plead facts showing “how, when, where, to whom, and by what means the representations were tendered.” (*Ibid.*) The same holds true for negligent misrepresentation, which sounds in fraud. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166.)

Both of these causes of action require a misrepresentation of material fact, the plaintiff’s actual reliance on the misrepresentation, and resulting damage. (*Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1089, fn. 2; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) “Whatever form it takes, the injury or damage must not only be distinctly alleged but its causal connection with the reliance on the representations must be shown.” (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1818.) A mere assertion of reliance is not enough. (*Cadlo v. Owens-Illinois, Inc., supra*, at p. 519.) “Actual reliance occurs when the defendant’s misrepresentation is an immediate cause of the plaintiff’s conduct, altering his [or her] legal relations, and when, absent such representation, the plaintiff would not, in all reasonable probability, have entered into the transaction.” (*Ibid.*)

Barton’s allegations of fraud and negligent misrepresentation were not sufficiently specific, particularly when it came to reliance. She alleged these two causes of action against “[a]ll [d]efendants” (boldface omitted)—the dental defendants, the lab defendants, Argen, and IdentAlloy. As to the dental defendants, she alleged that they alone misrepresented a number of facts. In addition, the collective defendants allegedly

provided forged IdentAlloy certificates to her. Assuming that this allegedly forged certificate constituted a misrepresentation of fact by the lab defendants, Barton's allegations did not specifically show reliance. She alleged that, in reliance on misrepresentations, she paid for and permitted the dental defendants to place the crowns and received further dental treatment from them. Yet she does not specify which misrepresentations induced this reliance—the IdentAlloy certificates, the dental defendants' separate misrepresentations, or both.

More to the point, she did not allege “‘how, when, [or] where’” she learned of the IdentAlloy certificates. (*Stansfield v. Starkey, supra*, 220 Cal.App.3d at p. 73.) The FAC alleges only that “[p]rior to installation of the [c]rowns,” the lab defendants sent the IdentAlloy certificates to the dental defendants. This still does not identify how, when, or where Barton learned of the certificates. If she did not learn of them until after she paid for the crowns and Dr. Elias placed them, they could not have induced her reliance in the manner suggested by the FAC. (*Slakey Bros. Sacramento, Inc. v. Parker* (1968) 265 Cal.App.2d 204, 208 [parties cannot be defrauded by misrepresentations of which they did not know at the time of their loss]; *Bank of St. Helena v. Lilienthal-Brayton Co.* (1928) 89 Cal.App. 258, 263 [“[T]here can be no reliance on statements which do not come to the knowledge of a contracting party until after he has consummated the transaction”]; 5 Witkin, Summary of Cal. Law (11th ed. 2017) Torts, § 931, p. 1265 [“If the statements did not come to the knowledge of the plaintiff until after he or she acted, obviously plaintiff cannot claim reliance on them”].)

On appeal, Barton does not directly address this pleading deficiency. But in a section of her opening brief unrelated to the demurrers, she asserts that Dr. Elias, as her agent, relied on the IdentAlloy certificates in placing her crowns. (See *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 129 [“[L]iability for a fraud worked on an agent is imposed where it is the agent who not only places reliance on the misrepresentations, but also makes the decision and takes action based upon the misrepresentations”].) While an agency theory of reliance is possible, the FAC contained no allegations to support such a theory. Instead, the FAC alleged that Dr. Elias was one of the collective defendants who defrauded Barton by providing forged certificates. Dr. Elias could not have both known of the forgeries *and* justifiably relied on them as Barton’s agent. (*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1332 [“Besides actual reliance, plaintiff must also show ‘justifiable’ reliance, i.e., circumstances were such to make it *reasonable* for plaintiff to accept defendant’s statements.”].)

For these reasons, the court properly sustained the lab defendants’ demurrers to the fraud and negligent misrepresentation causes of action.

C. Unfair Competition

The statute of limitations for an unfair competition cause of action is four years. (Bus. & Prof. Code, § 17208.) This cause of action is subject to the same rules as the products liability causes of action. That is, the limitations period begins to run when the cause of action accrues. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) It accrues ““when [it] is complete with all of its elements”—those

elements being wrongdoing, harm, and causation.” (*Ibid.*; see also *id.* at pp. 1196-1197.) The discovery rule may delay accrual. (*Aryeh*, at p. 1192.)

A demurrer will lie when the dates expressly alleged in the complaint disclose that the statute of limitations bars an action. (*Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191; *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 324.) “In order to rely on the discovery rule for delayed accrual of a cause of action, ‘[a] plaintiff whose complaint shows on its face that his [or her] claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.” (*Fox v. Ethicon Endo-Surgery, Inc.*, *supra*, 35 Cal.4th at p. 808; see also *Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th at p. 1197 [the burden of showing exceptions to the general rule of accrual is imposed on the plaintiff even at the pleading stage].) Conclusory allegations of delayed discovery will not suffice. (*Fox v. Ethicon Endo-Surgery, Inc.*, *supra*, at p. 808; *WA Southwest 2, LLC v. First American Title Ins. Co.* (2015) 240 Cal.App.4th 148, 157.)

The allegations of the FAC disclosed that Barton’s unfair competition cause of action accrued in April 2010. The alleged unfair competition consisted of providing the forged IdentAlloy certificates and failing to establish procedures to guard against forgery. Barton alleged that the dental defendants placed the crowns in April 2010, and at some point before this, they received the allegedly forged certificates from the lab defendants. Moreover, under the fraud cause of action, she alleged that she paid \$2,250 “in anticipation of the manufacture and purchase” of the crowns and the dental defendants’

services, which money constituted damages “because she was promised and expected one type of crowns (of the highest quality) and received a different (lower quality) type of crowns.” This is the sort of economic harm that the unfair competition law contemplates. (Bus. & Prof. Code, § 17204; *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 323.) The lab defendants’ alleged wrongdoing thus occurred by April 2010, as did harm to Barton. But she did not bring the unfair competition cause of action until January 2017, long after the four-year statute of limitations expired.³

As she does with the products liability causes of action, Barton argues that this cause of action was timely under the discovery rule. She asserts that she did not discover the falsity of the IdentAlloy certificates until June 2013, when she had the crown analyzed and discovered the composition was not as represented. Consistent with this argument, the FAC alleged that she discovered the “representations of the [d]efendants were in fact false . . . in or about June of 2013,” after she sent the crown for testing. This alleged the time and manner of discovery. (*WA Southwest 2, LLC v. First American Title Ins. Co.*, *supra*, 240 Cal.App.4th at p. 157.) For delayed accrual to apply, however, she also had to plead facts showing the inability to have made earlier discovery despite

³ Barton suggests that the relation back doctrine should apply here. The doctrine effectively enlarges the statute of limitations by holding that an amended complaint relates back to the filing of the original one. (*Norgart, supra*, 21 Cal.4th at p. 408.) The doctrine “requires that the amended complaint must (1) rest on the *same general set of facts*, (2) involve the *same injury*, and (3) refer to the *same instrumentality*, as the original one.” (*Id.* at pp. 408-409.) Assuming for the sake of argument that the FAC related back to the filing of the original complaint, the unfair competition cause of action was still untimely. The limitations period expired in April 2014, and Barton filed the original complaint in August 2014.

reasonable diligence, and she had to do so in a nonconclusory manner. (*Ibid.*) The FAC did not allege this inability.

In sum, the face of the FAC revealed that the unfair competition cause of action accrued in April 2010. Barton failed to carry her burden of pleading the applicability of the discovery rule, so the statute of limitations expired in April 2014. The court correctly concluded that this cause of action was time-barred.

III. *Motions to Strike*

Barton contends that the court abused its discretion by striking the breach of contract cause of action. We also reject this argument.

Section 436 gives the court discretion to strike “all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (§ 436, subds. (a), (b).) We review an order striking a pleading for abuse of discretion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.)

There was no abuse of discretion here. Barton included a proposed FAC with her motion for leave to amend the complaint, as required by the California Rules of Court. (Cal. Rules of Court, rule 3.1324(a)(1).) The court’s order granting leave to amend was “made with reference to the proposed amended pleading and g[ave] the pleader the right to file the particular amendment which [she] submitted to the trial court.” (*People ex rel. Dept. Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785.) In addition, the court could not permit the substantive amendments proposed by Barton without “notice to the adverse party.” (§ 473, subd. (a)(1).) Barton did not move to add a breach of contract

cause of action against the lab defendants, nor did they have notice of that proposed change and an opportunity to respond. Consequently, the order granting her motion did not authorize the breach of contract cause of action, and that particular amendment did not conform to the court's order. (§ 436, subd. (b).) The court acted well within its discretion by striking the cause of action. (*Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329 [court properly struck a new cause of action because it exceeded the scope of the court's order allowing the plaintiff to amend the complaint].)

Barton argues that, at the dental defendants' summary judgment hearing, her counsel's reference to clean-up steps amounted to a request to "make corrections" to the proposed FAC. At that hearing, her counsel stated: "With respect to the amendment that was granted by the Court, is the Court requiring us to not take any clean-up steps with respect to the proposed amendment? And the reason I ask that—." The court interjected: "The Court is telling you you should do what you believe you need to do." Barton maintains that she reasonably interpreted the court's response as tacitly approving her wish to change the proposed FAC. But the court did not agree that this was a reasonable interpretation of its response when it struck the challenged cause of action. And we cannot say that the court's understanding of its own comment was an abuse of discretion. It was not reasonable to think that the court would authorize any amendments Barton believed were necessary, sight unseen, especially without notice to the affected defendants and an opportunity to respond.

DISPOSITION

The judgments are affirmed. Respondents shall recover their costs of appeal.

(Cal. Rules of Court, rule 8.278(a)(1).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MENETREZ
J.

We concur:

McKINSTER
Acting, P. J.

MILLER
J.